

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DE'ANDRE E. PAUL, JR.,

Plaintiff,

v.

CARL AVENI, *et al.*,

Defendants.

:

Case No. 2:23-cv-2081
Judge Sarah D. Morrison
Magistrate Judge Stephanie K.
Bowman

:

ORDER

Mr. Paul is an Ohio state inmate proceeding without assistance of counsel. (ECF No. 1.) He alleges that the defendants, Judge Carl A. Aveni and defense attorney Brandon Shroy, violated his speedy trial rights in connection with his criminal case in the Franklin County Court of Common Pleas. (*See* Compl.) He claims that Judge Aveni and Mr. Shroy threatened and forced him to take his case to a May 2023 jury trial. (*Id.*)

After performing an initial screen of the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, the Magistrate Judge recommended that the Court dismiss Mr. Paul's Complaint in its entirety for failure to state a claim upon which relief may be granted. (ECF No. 16.) Mr. Paul timely filed an objection to the Report and Recommendation. (ECF No. 17.)

If a party objects within the allotted time to a report and recommendation, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

The Magistrate Judge recommended that Mr. Paul's Complaint be dismissed for failure to state a claim upon which relief may be granted. (*Id.*) She determined

that Judge Aveni has absolute immunity from liability because Mr. Paul's allegations against him are based on judicial acts performed while functioning in his judicial capacity and on matters over which he had subject matter jurisdiction. (*Id.*)

As to the claims against Mr. Shroy, the Magistrate Judge determined that the § 1983 claims against him must be dismissed because Mr. Shroy is not a state actor. And to the extent that Mr. Paul alleges that Mr. Shroy and Judge Aveni conspired against him, the Magistrate Judge concluded that the conspiracy claims must be dismissed because Mr. Paul's Complaint lacks any degree of specificity. (*Id.*)

Finally, the Magistrate Judge concluded that Mr. Paul's Complaint is subject to dismissal to the extent that he seeks dismissal of the charges and release from custody because his state-court criminal conviction violated his speedy trial rights; the proper remedy is a petition for a writ of habeas corpus. (*Id.*)

The Court finds no error in the Magistrate Judge's conclusions or reasoning.

Accordingly, Mr. Paul's Objection (ECF No. 17) is **OVERRULED**. The Court **ADOPTS** and **AFFIRMS** the Magistrate Judge's Report and Recommendation (ECF No. 16). The Complaint is **DISMISSED**. The Clerk is **DIRECTED** to **TERMINATE** this case from the docket of the United States District Court for the Southern District of Ohio.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE